IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7945 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYABEN S SARVAIYA

Versus

UMAKANT PANDIT & ORS.

Appearance:

MR RA MISHRA for Petitioner

MR G. DUBAL for Respondent Nos. 1 & 2 - Absent

MS DARSHANA PANDIT, AGP for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 29/09/2000

ORAL JUDGEMENT

The petitioner who was serving with the respondents Nos. 1 and 2 as a primary teacher since 23.8.1977, feeling aggrieved by the order of the Primary

Education Tribunal to the extent that it did not grant interim relief in favour of the petitioner against the operation of the order of the respondent No.3 dated 13.8.1991 while admitting the appeal on 30.8.1991, by which she was denied pay applicable to trained qualified teachers, seeks a direction that the order dated 13.8.1991 made by the respondent No.3 at Annexure "C" should be stayed.

2. The petitioner possesses qualification of M.A and B.Ed. She had graduated in Sociology in the year 1973, passed her B.Ed in 1976 and was already having qualification of "Kovid" and "Rashtrabhasha Ratna. She was, according to her, qualified and trained teacher and therefore had given her pay and pay-scale as such. However, the respondent No.3 had raised an objection and did not fix her salary as a trained qualified teacher. Therefore, she had approached the Tribunal and the Tribunal directed respondent No.3 to decide the question of pay fixation, by its order dated 19.4.1991. The respondent No.3 thereupon made the order dated 13.8.1991, deciding the question of paying fixation against the petitioner, treating her as an untrained teacher. That decision was challenged before the Tribunal by way of appeal and the Tribunal while admitting the appeal did not pass any interim order. The effect of not granting interim relief was that the petitioner was to be paid salary of an untrained teacher, despite her high qualifications including a Bachelor of Education degree. On 11.12.1991 while granting interim relief, Hon'ble Mr.Justice C.K. Thakkar (as His Lordship then was) had observed that, prima-facie, the contention raised on behalf of the petitioner that since the petitioner was having higher qualification of B.Ed, her not having the lower qualification of PTC did not matter, appears to be well founded. Interim relief was therefore granted against the operation of the order made by the respondent No.3 on 13.8.1991. The effect of this order was granting of interim relief which was not granted by the Primary Education Tribunal while admitting the petitioner's Appeal No. 223 of 1991 on 30.8.1991. Most likely that appeal might have been disposed of by now, but the learned Counsel for the petitioner has no instructions on that aspect of the
rightly granted on 11.12.1991, having regard to the fact that the petitioner was having higher qualifications including a degree of Bachelor of Education and that she was already given the pay-scale of a trained teacher as stated in the petition which ought to have been continued during the pendency of the appeal, which was filed by her against the order of the respondent No.3 dated 13.8.1991.

If the petitioner's Appeal No. 223/91 filed before the Tribunal is not yet disposed of, then this interim relief which has been granted shall continue till the disposal of that Appeal by the Tribunal and if the appeal is decided then the matter would be treated as having become infructuous. Rule is made absolute accordingly with no order as to costs.

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